In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 294

MARY L. MEGGE, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

This action was instituted by petitioners under the Federal Tort Claims Act to recover for personal injuries and for the death of a minor child sustained in an automobile collision on a Michigan highway. Petitioners alleged that the collision was the fault of an Air Force Sergeant stationed at Selfridge Air Force Base in Michigan, who was driving his privately owned automobile after leaving the base in an intoxicated condition.

There was no allegation that the sergeant was acting in the line of duty at the time of the accident, but petitioners contended that the United States was liable because liquor had been served to the sergeant at a non-commissioned officers club on the base that evening. Petitioners relied upon the provisions of the Michigan Dram Shop Act (Pet. 29-32, 33), which hold any person guilty of the "unlawful" sale of liquor liable to anyone injured as a result of such sale and which make "unlawful" the sale of liquor by any "vendor" to any person in an intoxicated condition. Mich. Stat. Ann. §§ 18.993, 18.1000. The district court granted the government's motion to dismiss (Pet. 15) on the ground that "vendor" as used in the latter provision is defined by the statute to include only licensees under the Michigan Liquor Control Act (Pet. 28; Mich. Stat. Ann. § 18.972(13)). Since the United States is not required to have a State license, its sale of liquor was held not to be covered by that provision (Pet. 16). The court of appeals affirmed (Pet. 18-22; 344 F. 2d 31), with the observation that (Pet. 22)

> the district court has adopted a permissible interpretation of the Michigan statute in ruling that the sales of intoxicants under the facts and circumstances of this case do not come within the scope of the Michigan liquor control act.

This case obviously presents no issue warranting review by this Court since it turns entirely upon an interpretation of Michigan law. The courts below analyzed the Michigan statute and concluded that, in

prohibiting the sale of intoxicating liquor to an intoxicated person and creating a cause of action against the seller for injuries sustained by a third person by reason of such unlawful sale, the statute was limited to sellers otherwise regulated by the State's liquor laws. Petitioners cite no decision of the State court supporting a contrary result.

As the court below held, those injured by an intoxicated person had no claim at common law against a person who served liquor to the tortfeasor (Pet. 20). The Michigan courts have recognized that there is no such common-law right. *Jones* v. *Bourrie*, 369 Mich. 473, 476-477, 120 N.W. 2d 236, 238. Hence a private party would not be liable in the absence of statute; since the statute is inapplicable to the United States, there is no basis under State law for imposing liability upon the government.

Moreover, the Tort Claims Act authorizes the imposition of liability upon the United States only for negligent or wrongful acts, and does not permit recovery on a theory of absolute liability. *Dalehite* v. *United States*, 346 U.S. 15, 44-45. Consequently, even if the Michigan statute were applicable as a matter of State law, it could not constitute a basis for holding the government liable in this case. Michigan courts have construed the statute as imposing absolute liability irrespective of fault. *Wyatt* v. *Chosay*, 330 Mich. 661, 669, 48 N.W. 2d 195, 199-200; *Long* v. *Dudewicz*, 355 Mich. 469, 477, 94 N.W. 2d 844, 848.

For the foregoing reasons, we respectfully submit that the petition for a writ of certiorari should be denied.

ARCHIBALD COX,
Solicitor General.

JULY 1965.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1965 V62155 52